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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,620	01/16/2004	Charles A. Eldering	T708-14	1665
81712	7590	03/31/2010	EXAMINER	
Carlinco, Spicer & Kee, LLC 2003 S. Easton Road, Suite 208 Doylestown, PA 18901			CHIN, RICKY	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/759,620

Applicant(s)

ELDERING ET AL.

Examiner

RICKY CHIN

Art Unit

2423

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 5-8, 10-18, 22, 23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-8, 10-18, 22-23, and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed January 15, 2010 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

New Matter

3. Claims 1, 3, 5-8, 10-18, and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant refers to the specification of the present invention (paragraphs 10-11, 74-78 and 81-82) as to disclose the newly added claim limitations. However, as for independent claims 1 and 25, no where in the cited paragraphs is the calculated price calculated such that the price "does not exceed the maximum bid" recited. In contrary, the specification (paragraphs 10-11, 74-78, and 81-82) merely recites the price being calculated according to the correlation but does not allude to and disregards the relationship of that price to the maximum bid. Hence, there is no disclosure in the

specification as to calculating the price based on the correlation, such that the calculated price "**does not exceed the maximum bid**" (emphasis added).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3, 5-20, 22-23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carles, US 5,661,516 in view of Bryant, US 5,652,615, in further view of Hane 2006/0041921, and in further view of Safadi, US 6,487,721.

Regarding claim 1, Carles discloses of a method for managing selection and insertion of advertisements (See Abstract), the method comprising: determining subscriber characteristics (See col. 3 lines 1-15- col. 4 lines 1-10 which discloses identifying and providing information about categories of recipients and groups of households defining its region) for an advertisement opportunity within a program stream (See col. 3 lines 40-65 which discloses breaks in program material for commercial insertion for each household); receiving at least one request for advertisement presentation (See col. 3 lines 30-62 which discloses the insertions for each subscriber during each break are determined by the CMMS 11 and are communicated to server 10 for insertion into schedule 31. Therefore, a request is being

made by the CMMS and being received by the server), the at least one request including advertisement characteristics, comprising intended target market characteristics (See col.3 lines 44-55 which discloses that based upon information contained in the commercial muting database and information embedded in the commercial message CMMS will select certain households to receive certain commercial messages and will convey that information to server 10 for storage in commercial message schedule 31, thus comprising of an intended target market of households); and selecting targeted advertisements for insertion into the advertisement opportunity, wherein the targeted advertisements are selected by correlating the intended target market characteristics to the subscriber characteristics (See col.3 lines 16-60 and col. 4 lines 66-col. 5 lines 1-45 which discloses the CMMS communicating to the server for insertion into the schedule and determining the commercials to be sent to a subscriber based on profile household data in profile database 36. Furthermore, correlation of the intended market characteristics to the subscriber characteristics is further exemplified by the categories of goods and services which are part of the embedded information and using syndicated research whereby a representative sample of a high frequency user or customer for the given product is selected whereby targeted households are characterized for the product or service and ratings are given for each category of goods/services with a higher rating being a more likelihood of a purchase)

Charles does not explicitly teach of determining an avail bandwidth and minimum bandwidth requirements, wherein the minimum bandwidth requirements represent required amount of bandwidth available within the program stream for the advertisement

to be inserted, wherein the targeted advertisements are also selected by comparing the avail bandwidth to the minimum bandwidth requirements.

However, in the same field of endeavor, Bryant teaches of determining an avail bandwidth and minimum bandwidth requirements (See col. 4 lines 37-45 and Fig. 3 which discloses the relative indication of bandwidth requirements and col. 5 lines 4-9 which discloses determining the allocated bandwidth available for the base and fill segments), wherein the minimum bandwidth requirements represent required amount of bandwidth available within the program stream for the advertisement to be inserted and wherein the targeted advertisements are also selected by comparing the avail bandwidth to the minimum bandwidth requirements (See col. 5 lines 4-9 which discloses that for a 6Mb/s signal , up to 3.0 Mb/s or four 1.5 Mb/s fill segments can be concurrently broadcast. Hence, in order to be able to allocate the bandwidth necessary to fill the fill segments, the bandwidths of the fill segments must be first determined to see if they would fit the required bandwidth of the signal in combination with the other fill segments if concurrently broadcast. Therefore, fill segments which are too big and use up too much bandwidth cannot fit with other fill segments concurrently cannot be used making selection based on comparing avail bandwidth to minimum bandwidth requirements necessary).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Carles to incorporate determining an avail bandwidth and minimum bandwidth requirements, wherein the minimum bandwidth requirements represent required amount of bandwidth available within the

program stream for the advertisement to be inserted, wherein the targeted advertisements are also selected by comparing the avail bandwidth to the minimum bandwidth requirements as taught by Bryant to allow a quality and successful insertion of a targeted advertisement to occur by preventing overflow and making efficient use of the available bandwidth. The combination of Bryant and Carles further teaches of containing the results of the correlation (See Carles, col. 5 lines 20-47 and col. 8 lines 57-67 which discloses that advertisers may purchase advertising time based on the calculated correlation of the subscribers).

The combination of Carles and Bryant does not explicitly teach of receiving, from a plurality of advertisers, a plurality of requests for advertisement presentation, each request including a maximum bid and of minimum bandwidth requirements; selecting a targeted advertisement from the plurality of requests for insertion into the advertisement opportunity based at least in part on the maximum bid, the minimum bandwidth requirements and a correlation between the intended market characteristics and the subscriber characteristics, wherein a price for inserting the targeted advertisement is calculated based on the correlation.

However, in the same field of endeavor, Hane teaches of receiving, from a plurality of advertisers, a plurality of requests for advertisement presentation (See [0050] which discloses a plurality of users specifying delivery requests), each request including a maximum bid and of minimum bandwidth requirements (See [0025];[0069] which discloses bidding on the avail, whereby each bid is construed as at least a temporary maximum bid and [0045];[0052];[0054];[0078] and [0081] which discloses a

buyer as being able to enter any necessary parameters, determining technical capabilities to fulfill the request, booking a bandwidth and setting levels of access to available bandwidth. Hence, by being able to book a bandwidth, determine technical capabilities to fulfill requests, and setting levels of access to available bandwidth, it would be at least obvious for a buyers request to include bandwidth requirements since bandwidth requirements and available bandwidth are paid for by the buyer with extra costs. Furthermore, minimum bandwidth requirements are a well-known technical capability and parameters of an avail as further emphasized in Safadi, US 6,487,721 in col.6 lines 35-40); selecting a targeted advertisement from the plurality of requests for insertion into the advertisement opportunity based at least in part on the maximum bid (See [0069] which discloses priority of a delivery commitment based on higher price), the minimum bandwidth requirements (See [0045] which discloses booking a small amount of bandwidth; [0052] which discloses allowing the buyers to enter any necessary parameters; [0054] which discloses determining the technical capabilities to fulfill the request; and [0081] which discloses setting priorities for the use of available bandwidth such as allowing only narrowband commands that require few resources) and a correlation between the intended market characteristics and the subscriber characteristics (See [0068] which discloses fulfilling the request because the parameters of the avail profile substantially match the parameters of the Citibank delivery commitment), wherein a price for inserting the targeted advertisement is calculated based on the correlation (See [0054] which discloses determining the price of the order based on various criteria such as historical data. Hence, because a buyer

selects parameters and the requests are fulfilled based on a substantial match between the two, the price of the advertisement is therefore also subsequently calculated based on the correlation since it uses the historical data of the substantially matched users parameters to determine the price).

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Carles and Bryant to have incorporated the teachings of Hane for the benefit of better characterizing the advertisement opportunity as well as the buyers desired criteria/parameters for an avail in order to maximize profits and cost effectiveness by auctioning off advertisements opportunities to advertisers that meet the advertisers target criteria.

The combination of Carles, Bryant, and Hane does not explicitly teach of compressing, based at least in part on the avail bandwidth, the selected targeted advertisement such that the minimum bandwidth requirements are satisfied. However, in the same of endeavor, Safadi teaches of compressing, based at least in part on the avail bandwidth, the selected targeted advertisement such that the minimum bandwidth requirements are satisfied (See col. 5 lines 13-34 which discloses that the commercial may be compressed as to enable rate adaptation such that the commercial content fits the bandwidth allocated for the program to which the commercial belongs). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Carles and Bryant to incorporate compressing, based at least in part on the avail bandwidth, the selected targeted advertisement such that the minimum bandwidth requirements are satisfied as taught by Safadi for the mere benefit

of ensuring that the commercial content is able to fit within the allocated bandwidth of the avail thereby preventing overloading.

The combination of Carles, Bryant, Hane, and Safadi does not explicitly teach of wherein the calculated price does not exceed the maximum bid. However, it is notoriously well-known in the art to determine or calculate the price of a product or a service as to not exceed the maximum bid (See cited references listed below in the conclusion). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the teachings of Carles, Bryant, Hane, and Safadi to incorporate determining or calculating the price of a product or a service as to not exceed the maximum bid for at least the reasons such as to better the chance of making a sale/transaction by not deterring potential consumers away by setting a price too high and to protect potential consumers from overpaying for the service/product.

Regarding claim 3, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of wherein said selecting a targeted advertisement includes selecting an advertisement having minimum bandwidth requirements less than or equal to the avail bandwidth (See Bryant, col. 5 lines 4-9 and Fig. 3 which discloses bandwidths of the fill segments being less than the avail bandwidth).

Regarding claim 5, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of wherein said determining

subscriber characteristics includes receiving node characteristics that are an aggregate of the subscriber characteristics for subscribers associated with a node (See Carles, col. 3 lines 16-62 which discloses the conveyed information pertains to a group of households).

Regarding claim 6, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of wherein said determining subscriber characteristics includes receiving the subscriber characteristics from publicly available data (See Bryant, col. 4 lines 1-37; Carles, col. 4 lines 4-35, and col.5 lines 1-30)

Regarding claim 7, the combination teaches all of the claim limitations of the method of claim 6. The combination does not explicitly teach of wherein the publicly available data includes real estate records and tax assessment records. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the parameters utilized to include such data as a matter of preference, at least for the desirable benefit of more accurately describing the user.

Regarding claim 8, the combination teaches all of the claim limitations of the method of claim 1, wherein said determining subscriber characteristics includes receiving subscriber characteristics associated with a group of subscribers (See Carles col. 3 lines 16-62 where the information pertains to a group of households).

Regarding claim 9, the claim has been analyzed and rejected for the reasons set forth in the rejection of claim 1.

Regarding claim 10, the combination teaches all of the claim limitations of the system of claim 1, the combination further teaches of wherein the intended target market characteristics include demographics (See Carles, col. 5 lines 1-30 which refers to demographics).

Regarding claim 11, the combination teaches all of the claim limitations of the method of claim 10, the combination further teaches of wherein a probabilistic distribution is assigned to various demographic attributes (See Carles, col. 5 lines 1-45 which refers to weighting on a statistical analysis).

Regarding claim 12, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of comprising inserting the compressed selected targeted advertisement associated with the winning advertiser into the avail (See Carles, Abstract and analysis of claim 1).

Regarding claim 13, the combination teaches all of the claim limitations of the method of claim 12, further comprising delivering the compressed selected targeted advertisement to at least some subset of the subscribers (See Carles, Abstract and col. 5).

Regarding claim 14, the combination teaches all of the claim limitations of the method of claim 13, the combination further teaches of wherein the subset includes individual subscribers (See Carles, Abstract and col. 5).

Regarding claim 15, the combination teaches all of the claim limitations of the method of claim 13, the combination further teaches of wherein the subset includes a group of subscribers (See Carles, Abstract and col. 5).

Regarding claim 16, the combination teaches all of the claim limitations of the method of claim 15, the combination further teaches of wherein the groups of subscribers are generated based on connectivity (See Carles, Abstract and col. 5).

Regarding claim 17, the combination teaches all of the claim limitations of the method of claim 13, the combination further teaches of wherein the subscribers include at least some subset of individuals, households, and groups (See Carles, Abstract and col. 5)

Regarding claim 18, the combination teaches all of the claim limitations of the method of claim 1, the combination further teaches of a multiplexed stream (See Bryant, Fig. 6 and col. 6 lines 55- col. 7 lines 17 which discloses multiple programs in the video stream; also refer to the analysis of claim 1)

Regarding claim 19, the claim has been analyzed and rejected for the same reasons set forth in the rejection of claims 1-3.

Regarding claim 20, the combination teaches all of the claim limitations of the method of claim 19, the combination further teaches of a multiplexed stream (See Bryant, Fig. 6 and col. 6 lines 55- col. 7 lines 17 which discloses multiple programs in the video stream; also refer to the analysis of claims 18-19)

Regarding claim 22, the claim has been analyzed and rejected for the same reasons set forth in the rejection of claims 1-3. Furthermore, Hane discloses of determining that the target market characteristics have a sufficient level of comparison to the subscriber characteristics (See [0068] which discloses that the Citibank ad will be delivered since the profile of the avail substantially matches the Citibank parameters).

Regarding claim 23, the combination teaches all of the claim limitations of the method of claim 22, the combination does not explicitly teach of comprising halting the insertion of the compressed targeted advertisement when the minimum acceptable bit rate is greater than the advertisement insertion opportunity bit rate. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included an error detection step as to being able to prevent a possible insertion overload by sending a fill segment requiring greater bandwidth than what the avail can handle or process.

Regarding claim 25, the claim has been analyzed and rejected for the same reasons set forth in the rejection of claim 1.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US 2005/0197875 – [0368] and [0377] discloses of calculating a price whereby the price is to be equal to or lower than, the maximum price specified by the producer
- US 7546277 – col.7 lines 25-45 discloses of determining prices bound by the max and min price as to protect both the operator and consumer.
- US 6260024 – col.5 lines 43-60 discloses of determining a price whereby a condition exists such that the buyer will pay no more for the service than the maximum offer price.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky Chin whose telephone number is 571-270-3753. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on 571-272-7296. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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